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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,447	11/07/2003	Arni Thor Ingimundarson	INGI3002/JEK/JJC	9711

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EXAMINER
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DAHBOUR, FADI H

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/702,447	Applicant(s) INGIMUNDARSON ET AL.	
	Examiner Fadi H. Dahbour	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 35 and 36 is/are allowed.
- 6) ☒ Claim(s) 1-5, 14-19, 22, 23 and 25-34 is/are rejected.
- 7) ☒ Claim(s) 6-13, 20, 21 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/7/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 34 is objected to because of the following informality:

In line 1 of the claim, the number "31" should be changed to --33--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 15-19, 22-23, 27-28 are rejected under 35 U.S.C. 102(e) as being anticipated by WO02/083040A1 (Smits).

Smits discloses an ankle-foot orthosis (Figs.1-6), comprising a structural frame (Figs.1, 2, 6) formed from at least one layer of fabric (see "fabric" in line 17 of page 3) impregnated with a hardened structural resin (see lines 17-18 of page 3), including at

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least one anterior support member extending downwardly from an upper leg engaging portion to an anterior ankle portion (Figs.1, 2, 6), the anterior ankle portion extending to a medial portion connecting to a foot plate (Figs.1, 2, 6), further comprising a fastening device connected to the at least one anterior support members at the upper leg engaging portion (Fig.6), wherein the foot plate defines a toe end, a heel end and an intermediate region therebetween (Fig.2), wherein the foot plate has a curvilinear shape (Fig.2), wherein the foot plate is secured to the medial portion of the structural frame (Fig.2), comprising two anterior support members defining a clearance therebetween and joining at the anterior ankle portion (Figs.1, 2, 6), wherein the two anterior support members join at the anterior ankle portion at about two-thirds the overall length of the structural frame from the upper leg engaging portion (Figs.1, 2, 6), the overall length of the structural frame defined as the distance from the upper leg engaging portion to the foot plate (Figs.1, 2, 6), wherein an upper leg engaging portion extends from the proximal end of each anterior support member wherein each upper leg engaging portion having a width greater than a width of the anterior support members and a curvilinear profile (see top of Figs.1, 2), wherein the structural frame includes at least one reinforcement integrated into the frame near or at the connection between the medial portion and the foot plate wherein the reinforcement member comprises at least one layer of structural material or composite (see "reinforcement... 4... embedded" in line 8 of page 3, also see 4 in Fig.2), wherein the structural frame is monolithic wherein the foot plate forming a portion of the structural frame (Fig.2).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-5, 25-26, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO02/083040A1 (Smits) in view of Davis.

Smits, as described above, discloses all the features claimed except a tapered thickness that generally decreases from the intermediate region to the heel and toe ends, and the heel end has a downward bend relative to the intermediate region. Davis discloses a tapered thickness that generally decreases from the intermediate region to the heel and toe ends, and the heel end has a downward bend relative to the intermediate region (Figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the features taught by Davis, in the device of Smits, for improved conformity to a user's foot.

6. Claims 14, 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO02/083040A1 (Smits) in view of Turtzo.

Smits, as described above, discloses all the features claimed except an integrated coating or layer of polymeric coated textile material. Turtzo discloses an integrated coating or layer of polymeric coated textile material (see lines 31-45 of col.5, and lines 40-50 of col.6, also see Figure 1, also see "integrated" in line 23 of col.10). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the features taught by Turtzo, in the device of Smits, for improved user comfort.

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO02/083040A1 (Smits) in view of Turtzo.

Smits, as described above, discloses all the features claimed except an integrated padding feature. Turtzo discloses an integrated padding feature (24, 42 of Fig.1, also see "integrated" in line 23 of col.10). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the features taught by Turtzo, in the device of Smits, for improved user comfort.

8. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO02/083040A1 (Smits) in view of Turtzo.

Smits, as described above, discloses all the features claimed except a releasable padding feature. Turtzo discloses a releasable padding feature (16 of Fig.5, also see "releasably" in line 16 of col.8). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the features taught by Turtzo, in the device of Smits, for improved user comfort.

#### ***Allowable Subject Matter***

9. Claims 6-13, 20-21, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 35-36 are allowed.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Townsend et al, Anderson, Pior et al, Wehr, Hess et al, Westin et al, Chong and Lindemann are cited to show orthosis devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 571-272-4792. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fadi H. Dahbour  
Examiner  
Art Unit 3743